1944.

File No. O. Sale 56
Goods/44
Legal Department—
A BRANCH

Subject:— Opinions under the
Indian Sale of Goods Act, 1930.

File No. O - Sale of Goods/44

Gen. 194 e.

132-A

C O N T E N T S

Legal Department File No O. Sale of Goods /44

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Office of the R.L.A.

The question raised for the consideration of the R.L.A. is whether the controlled rate under Finance Department (Supply) order No. 45-B dated 31st December 1943 would be applicable to deliveries made on or after 1st January 1944 against contracts made prior to that date.

2. Under F.D.(Supply) Order No. 45-B dated 31st December 1943 with effect from the 1st January 1944 groundnut oil cake shall not be sold by any oil mill etc., at a price exceedings Rs. 75/- per ton ex-godown of the mill. It is clear that this order prohibits sale of groundnut oil cake from 1st January 1944 at a price exceeding Rs. 75/- per ton ex-godown of the mill. Section 4(4) of the Indian Sale of Goods Act, 1930 provides that an agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred. Consequently whether or not sale of groundnut oil cake was complete on or before 31st December 1943 though delivery was made on or after 1st January 1944 against contracts made before 31st December 1943 would depend on the facts of each case. The F.D. (Supply) Order No. 45-B dated 31st December 1943 will have no application to cases where the contract was complete sufficiently to constitute a sale on or before 31st December 1943 though delivery was made on or after 1st January 1944.

Sd/- P.N.Koos
29/1 44
Remembrancer of Legal Affairs.

U.R. to F.D. (Supply) No. 794, dated the January 1944.

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From the terms of the two contra ts it appears that time was of the essence of the contra ts. However, the contractor alleges that the District Magistrate consented to accept -- deliv ry even after the stipulated dates. The D.M. denies this agree ent. But on the 19th January the District Magistrate recommended the contractor's applitation to the Director of Civil Supplies for permits for certain bales of bags. The recommendation was made after the expiry of the stipulated date for the first contract. The contractor stat s that what transpired at the interview on the 18th was confirmed by a letter. That letter is not in the present papers. In those circumstances it would be difficult for Government to avoid the contract ~~xxkx~~ on the ground of non-performance within the stipulated period. However, the two contracts have not been expressed to be made by the Governor as required by the provisions of section 175(3) of the Government of India Act, 1935 and are therefore inoperative in law. It is open to Government to repudiate the contracts.

2. It appears that some further goods are now in transit and will be delivered willy nilly to the District Magistrate after the stipulated dates. If the contractor has reserved no right of disposal in these goods, the District Magistrate may take delive of them and give notice to the contractor that he refuses to accept them. '(See section 43 of the Sale of Goods Act, 1930). Thereafter they would be in the D.M.'s custody on behalf of the contractor. After further notice to the contractor the District Magistrate may sell the goods and remit the sum to the contra. ctor after deducting his charges.

Sd/- P.N.Moos

o.c. 29/2/44

Remembrancer of Legal Affairs.

U.R. to F.D. (Supply) No. 1576, dated the 29th February 1944.

Mjr/10/7

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The facts of the case are not clear. It is not known whether the goods were insured. Under section 32(1) of the Sale of Goods Act, 1930, delivery of goods to a common carrier is prima facie deemed to be a delivery of the goods to the buyer. In the absence of any contract to the contrary copies of Law Reports on transmission by Messrs. William Dawson & Sons, Ltd., would be deemed to have been delivered to H.D. Consequently H.D. cannot hold Messrs. Willam Dawson & Sons, Ltd.,,liable for the loss of copies in transit and will have to pay for replacement of them. The view taken by H.D. does not appear to be correct.

Sd/- P.N.Moos 4/5/44

O.C.

Remembrancer of Legal Affairs.

U.A. to H.D., No. 3272 dated the 5th May 1944.

Mjr/10/7

4 Cs.

Offi e of the A.L.A.

It appears that on 30th April 1943 the Manager , Government Photo Registry office wrote to Messrs. Cox and Kings (Agents) Limited, Hornby Road, Fort, Bombay, for the supply of Kentmere Akbograph Bromide paper from their princi pals Messrs. Kentmere Limited, Staal, Westmereland, England, so as to be available by December 1943. In reply Cox and Kings (Agents) Limited wrote to the Manager on 5th May 1943 that they were not in a position as clearing and Forwarding Agents to act on his request unless they had a definite assurance from him that the paper in question would be purchased by his office on arrival in India. and that the request as contained in his letter dated 30th April 1943 was definit order. Accordingly on 10th May 1943 the Manager wrote to Cox and Kings (Agents) Limited giving an assurance that "the paper in question would be purchased on arrival and paid for at price ruling them." No objection was taken by Cox and Kings (Agents) Limited to the wording of the assurance given by the Manager. It appears that an import license was found necessary to secure priority freight and consequently at the request of Cox and Kings (Agents) Limited the Manager, Government Photo Registry obtained from the Government of India an Import license. The package containing the goods arrived in Bombay and was taken delivery of by a clerk of Cox a d Kings (Agents) Limited on 14th April 1944 on which day the explosions in the dock area occurred. It appears that the package was carted out of the Yellow Gate, Alexandra Dock on the afternoon of the 14th April when the fire took place and the clerk in charge abandoned the package on the road in the vicinity of the Police Station and it was not later traced. Cox and Kings (Agents) Limited have demanded payment of Rs. 1689/- fr m the Manager as price of paper and costs of transport and other charges leaving it to him to claim ~~from the~~ damages from the Insurance Company and Government of ~~the~~ India under the Bombay Explosion Ordinance . The question for the consideration of the R.L.A. is whether Government is liable to pay the amount as demanded by Cox

and Kings (Agents) Limited.

2. The liability of Government to pay for the goods would arise obly when it is proved that the property in the goods had by the time they were lost, passed to the Manager Government Photo Registry Office (See section 4 of the Indian Sale of Goods Act). Section 26 of the Sale of Goods Act prpvided that unless otherwise agreed the goods remain at the Sellers risk until the property therein is transferred to the buyer, but when the property therein is transferred to the buyer, the goods are at the buyer's risk whether delivery has been made or not. Under sub-section (2) of section 25 where goods are shipped and by the bill of landing the goods are deliverable to the order of the seller or his agent the seller is prima facie deemed to reserve the right of disposal (see also section 46(2) and section 53(1) of the Sale of Goods Act). It is presumed that the bill of lading was endorsed to Cox and Kings (Agents) Limited. According to the terms of agreement as disclosed in the letters dated 30th April 1943 and 10th May 1943 the Manager had only agreed to purchase from Cox. and Kings (Agents) Limited the goods on arrival from England. It appears therefore clear that the property in the goods had not, by the time they were lost, passed to bhe Manager, Government Photo Registry Office and consequently there would be no liability of Government to pay the price (see also section 31 of the Indian Sale of Goods Act.). The fact that an import license was obtained by the Manager, Government Photo Registry Office would not affect the position of Government, since the object of it was merely to secure priority freight and this was something which the Manager as the intending purchaser could do without acquiring ownership in the goods. The Inspector General of Registration may write to Cox and Kings (Agents) Limited disowning all liability of Government and at the same time making it clear that Government has no objection to Cox and Kings (Agents) Limited taking suitable steps to claim compensation either from the Insruance Company or from the Government of India.

Sd/--P.K.Moos
18/8/44
Remembrancer of Legal Affairs.

o.c.

U.R. to R.D. No. 5843 dated the 19th August 1944.

Office of the R.L.A.

Section 24 of the Indian Sale of Goods Act, 1930, provides:- W

"When the goods are delivered to the buyer on approval or "on sale or return" or other similar terms and property therein passes to the buyer -

(a) When he signifies his approval or acceptance to the seller or does any other act adopting the transction ;

(b) if he does not signify his approval or acceptance to the seller but retains the goods without giving notice of rejection, then, if a time has been fixed for the return of the goods on the expiration of such time, and, if no time has been fixed, on the expiration of a reasonable time.

In the present case it appears that the Food Controller obtained on 8-4-1944, a sample steel yard from Messers. W. & T. Avery Ltd., Ballard Estate, Bombay, for demonstration, that is to say, on approval. That steel yard was destroyed by the explosions and fires in Bombay on 14-4-1944 while still in the possession of the Food Controller. The Correspondence does not disclose that any time was fixed for the food Controller to signify his approval or acceptance. Consequently under the latter part of caluse (b) of section 24 the Food Controller was required to signify his approval or acceptance within a reasonable time on the expiration of which the property in the steel yard would be deemed to have passed by time. What is a reasonable time is a question of feet and in the absence of fuller details as to the exact date on which the sample steel yard was approved and the order for supply confirmed it is not possible for the R.L.A. to express any opinion. It is, however, unnecessary to determine the question of fixing the responsibility for compensation for under the Bombay Explosion (Compensation) Ordinance, 1944, the compensation can be recovered from the Government of India. The only question material for decision is who should apply for compensation. Under section5 read with Form E in the secnd Schedule to the Ordinance it is the owner or his duly accredited representative who can apply. Without prejudice to the rights of either party Messrs. W. & T. Avery Ltd., Ballard Estate, Bomba,, may therefore be instructed either to apply for compensation or to

appoi.t one of the officers of Government as their accredited representative s. to do under section 5 of the Ordinance.

Sd/- P.N.Moos
23/10/44

Remembrancer of Legal Affairs.

U.R to Food Con.roller, No 7314, dated the 24th Octob: r 1944.

Mjr/10/7

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Office of the R.L.A.

Some of the conditions subject to which the action sale was held by the Collector in the present case Provide: The prospective lessees desiring to bid at the auction will have to deposit with the Collector an amount of ten thousand rupees The deposit will be returned after the lease is sanctioned by Government. It will be forfeited if a bidder withdrawn from his high~~xxxx

Court on appeal set aside the order for re-sale and held that the Rajah's bid had lapsed as soon as a higher bid was made and that it had also lapsed by not having been accepted within a reasonable time. The Court also laid down the every bid at an auction is only an offer which could be withdrawn before acceptance.

In Mackenzie v. Chamrao (16 Cal) 702) the bid of an agent was accepted by the auctioneers (Kutcha pacca) subject to the sanction of the owner of the goods and the agent agreed thereto. It was held that this did not preclude the principals of the agent from exercising their right of retracting the bid before it was accepted by the auctioneers.

Applying the principles laid down in the aforesaid cases to the present case it appears that since the Collector can accept a bid subject to the sanction of Government a bid can be retracted at any time before Government sanctions the bid accepted by the Collector and on such retraction the only penalty that can be enforced is forfeiture of the deposit. Messrs. M.R.Thaper and D.D. Vasudeva have retracted their bid before it was accepted by the Collector with the sanction of Government. Consequently they would not be bound to complete the purchase. No doubt their deposit if not returned would have been liable to forfeiture. But their deposit has already been allowed to be withdrawn and used in connection with another auction sale which provided for a similar deposit being made by the intending bidder. This amounts to return of deposit so far as the present auction sale is concerned. Consequently no action appears legally feasible against Messrs. M.R. Thaper and D.D. Vasudeva.

Sd/- P.E.Rees
14/11/44

Remembrancer of Legal Affairs.

U.R. to the Collector of Bombay, No 7916, dated the 15th November 1944.

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